Wheeler Trigg
O'Donnell

# Won dismissal for a trucking company in a case involving catastrophic injuries. We discovered that the plaintiff had lied in his initial discovery responses and had failed to disclose critical medical records. The case was dismissed with prejudice on the eve of trial due to the discovery violation.

2019

In a case involving purported injury from an accident, and despite damaging testimony from a defense expert prior to WTO's entry in the case, WTO lawyers won dismissal with prejudice for a trucking company. The plaintiff produced a life care plan including over $20 million in future care costs following an accident that allegedly left him permanently disabled from a severe form of complex regional pain syndrome.

The case began in 2014 when a truck driver allegedly ran over the plaintiff's foot while unloading cars at a salvage yard. Following the accident, the plaintiff sued the driver's employer, asserting that the accident had caused him to develop complex regional pain syndrome, an incurable medical condition that would leave him permanently disabled, in severe pain, and unable to work for the rest of his life. He initially disclosed a $15 million life care plan, which he

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later escalated to $20 million as the litigation progressed.

Prior to WTO's involvement, a medical expert for the defense confirmed the plaintiff's alleged diagnosis and that the injury was caused by the accident, despite no medical treatment for nine months following the accident. The expert agreed that the plaintiff's condition was one of the worst cases of complex regional pain syndrome he had ever seen. WTO joined the case as trial counsel after discovery closed and immediately set out to mitigate damages.

In developing the case for trial, WTO requested an updated deposition on the plaintiff because it had been over a year since his last deposition. During that second deposition, the plaintiff disclosed for the first time that he had been in an intervening accident, for which he sought medical treatment. That accident and the emergency records had never been disclosed to the defendant, the experts who evaluated the plaintiff, or his treating doctors. In fact, the plaintiff had specifically denied any other accidents in his discovery responses. Based on these facts, the defendant's medical experts agreed that they could no longer link the accident to the plaintiff's injuries.

On the eve of trial, WTO moved for sanctions and asked the court to dismiss the case as a result of the plaintiff's intentional withholding of critical evidence that impacted years of litigation strategy. After a half-day oral argument on WTO's motion, the judge agreed that the plaintiff "deliberately and intentionally failed to disclose" the intervening accident and emergency room treatment. The court further found that "the nondisclosure was calculated to prevent Defendant from discovering whether there was another cause of Plaintiff's claimed injuries." Agreeing that the defendant's "case strategy would have been fundamentally and drastically

altered had the evidence been properly disclosed" before the eve of trial, the court held that the severest sanction of dismissal was warranted. After over three years of litigation and four trial continuances, the court dismissed the case.

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